

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



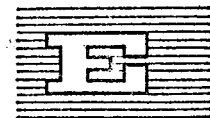
Distr.

GENERAL

E/CN.4/1214/Add.9

19 July 1976

Original: ENGLISH AND FRENCH



COMMISSION ON HUMAN RIGHTS  
Thirty-third session

PERIODIC REPORTS ON HUMAN RIGHTS

Reports on freedom of information, for the period  
1 July 1970-30 June 1975, received from Governments  
under Economic and Social Council resolution 1074 C (XXXIX)

	<u>Page</u>
Burundi .....	2
Germany, Federal Republic of .....	7

BURUNDI

[Original: French]

[19 May 1976]

I. Concise introductory description of general policies and significant developments during the period from 1 July 1967 to 30 June 1970 with regard to the freedom to seek, receive and impart information and ideas through any media

Burundi, which is a subscriber to several press agencies (Reuter, AFP, Tass, C.T.K., etc.) is kept informed about all important developments throughout the world and the comments of such foreign agencies on events within its frontiers.

But as each press agency has its own information policy (i.e., some events are ignored while others are given too much importance), the Government of Burundi reserves the right, after having compared and evaluated various sources, to state its true position on a particular event of some importance in its own information media.

It does so in order to spare the public the need to trust a view which may be truthful but which may also be erroneous or distorted.

This attitude is in conformity with article 2 of Ministerial Order No. 093/121 of 28 September 1970, entrusting the Press Department with responsibility for the publication of a daily information bulletin.

This article reads as follows:

"The bulletin shall appear daily and shall be intended to contribute to the dissemination of information concerning Burundi and the objectives which its Government has set itself.

"The bulletin shall, from day to day, disseminate news of Burundi as well as any international news that may contribute to the instruction and education of the general public."

This spirit of objectivity is reflected in all the positions which Burundi has adopted on developments both within and outside its frontiers.

This is true of the bloody events which occurred in Burundi in May 1972. Not only did Burundi make the true situation in the country known in the press and on the national radio, but it also invited foreign journalists to come and see what was happening for themselves.

Unfortunately, this did not prevent some foreign journalists from making tendentious comments on those events. But we leave them to assume responsibility for what they write. For our part, we published a white paper on that occasion and have collected all the articles in foreign newspapers and journals that we have been able to obtain on those events.

With regard to foreign developments, Burundi, in line with its consistent policy, seeks objective information which it then imparts to the public.

Its approach has never changed. Whether the information concerned the Vietnamese or Cambodian wars, the admission of People's China to the United Nations, problems of the Middle East and its policy towards Israel and the Palestinians, or the independence of former Portuguese colonies and the future independence of countries in Southern Africa still dominated by a white racist minority, Burundi has consistently referred to the United Nations Charter, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on the Elimination of all Forms of Racial Discrimination, and to human rights and fundamental freedoms for all people, without distinction of race, nationality, sex, language or religion.

II. Influence of the United Nations instruments containing principles and norms for the recognition and enjoyment of freedom of information on constitutions, laws and regulations and court decisions adopted or rendered during the period under review

Chapter III of the Constitution of the Republic of Burundi, promulgated on 11 July 1974, concerning public freedoms and individual freedoms, and particularly its article 10, which states that every Burundi citizen has the right to express his views orally and through the press in accordance with the laws and regulations, is unquestionably in complete conformity with the Universal Declaration of Human Rights and, consequently, the United Nations Charter.

The same applies to a number of laws and draft laws on the press, publications, advertising, music, the cinema, the press agency, etc. (see section III below).

III. Legislative and other measures adopted during the period under review, concerning in particular:

(a) the development of information media.

During the period under review, Burundi installed new short-wave and FM transmitters.

It also set up a Burundi press agency by Ministerial Order No. 093/121 of 28 September 1970, referred to above, under article 9 of the Special Provisions, which reads as follows:

"With a view to contributing to the establishment of a pan African press agency, as envisaged by the States members of the Organization of African Unity, the Press Department shall, through the bulletin "Flash-Infor", prepare the ground for a press agency at the national level".

During the same period, two information weeklies entitled UBUMWE, one in French and the other in the national language, came into being.

A "mobile" (people's) cinema was also introduced for the rural population and for villages in the interior.

(b) The operation of press and publications, radio, film, television and other media.

With regard to the operation of the press, articles 5 and 6 of Ministerial Order No. 093/121 of 28 September 1970 state:

"Art.5. Responsibility for editing and publishing the bulletin "Flash-Infor" shall be entrusted to the Director of the Press Department, assisted by a team of officials in his Department, which shall comprise:

- an official with the rank of Deputy Head of Administration, acting as Chief Editor,

- one or more officials with a rank no lower than Deputy Head of Division, acting as Editor.

"Art.6. The Director of the Press Department may secure the collaboration of correspondents in the provinces or abroad. The Minister of Information shall establish the basis for the remuneration of the aforesaid correspondents."

As for the cinema, Presidential Decree No.1/54 of 31 July 1970 governs the showing of films to the public in Burundi.

On another point connected with information matters, the Head of State decided, in Presidential Decree No. 100/273 of 11 November 1974 on the organization, functioning and composition of a new Government, to entrust the functions formerly performed by the Minister of Information to the Party, in order to enable it properly to exercise its role of laying down guidelines for general policy, popular education and the dissemination of our ideology. This reflects the wishes of our people to have the Party effectively exercise its supremacy over all other institutions.

(c) The participation of journalists and the public in the ownership and control of media.

Any attempt by journalists or individuals to take over our information media would be contrary to the very nature of those media which is political and educational and not commercial.

On the other hand, control is exercised over the media both by the Higher Programme Council of the Voice of the Revolution (the national radio), which consists of members of the various ministerial departments and listeners' representatives, as well as by the round table of journalists and by readers' and listeners' letters - a procedure which enables any person to express his views in print or on the air.

(d) The professional training of information personnel.

During the period under review, and more exactly in 1971, a Training Centre for radio officials was opened in the former Broadcasting House. This Centre is still in operation and trains both technicians and radio producers.

(e) Standards and professional ethics of journalists and bodies responsible for the application of those standards.

Journalists and press organs have complied with ethical standards in their publications.

IV. Limitations upon the exercise of freedom of information, particularly those pertaining to:

(a) The protection of reputations, rights and freedoms of others, including protection against interference with privacy.

The laws of Burundi impose certain restrictions on publications.

For example, inviolable and inalienable human rights are recognized and guaranteed under article 7 of our Constitution. Any person who violates the rights and freedoms of others is punished under articles 74 to 78 of the Penal Code of Burundi.

(b) The protection of national security or of public order (ordre public), or of public health or morals, including the suspension of freedom of information in situations of emergency.

Article 15 of the Constitution states that the rights recognized are subject only to the restrictions necessary to ensure respect for the rights of others and to satisfy the legitimate requirements of morality, public order and the permanency of the State.

(c) Advocacy of and propaganda for national, racial or religious hatred or racial and religious discrimination.

(d) Propaganda for war.

Article 5 of the Constitution states that any ethnic propaganda or manifestation of racial discrimination shall be punished by law. The penalty is laid down in article 75 bis of the Penal Code.

(e) The coverage by the press and other media of court proceedings.

(f) Other considerations.

Although everyone has the right to information, certain legitimate limits arising from other rights of the person and of the State cannot be ignored. These limits are imposed by the psychological reactions of the public, by the state of national and international relations and by the level of the general, vocational and civic training of citizens. Guidance must therefore be provided in selecting information, because the Department of National Guidance wishes the most useful information to have priority.

V. Action with a view to ensure that freedom of information is enjoyed by increasing numbers of the population and without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status

Our national radio broadcasts to the whole world. Newspapers are read by anyone who can obtain them. The cinema is open to everyone under Presidential Decree No. 1/54 of 31 July 1970. Other media exist (denominational radio and press).

VI. Difficulties experienced in ensuring the enjoyment of freedom of information, and methods and measures utilized to overcome these difficulties

The major difficulties are lack of technical equipment and various socio-economic factors, i.e. difficulties common to the developing countries. The methods used to overcome them are:

Listeners' surveys;

Establishment of a network of correspondents in all countries;

Newspaper kiosks; and

Draft laws on the press system.

GERMANY FEDERAL REPUBLIC

I. General policies and significant developments with regard to the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers

1. The Federal Republic of Germany regards freedom of information as a fundamental human right. It is expressly guaranteed by Article 5, para. 1, of the Basic Law. This provision guarantees to everyone the right freely to express his opinion by speech, writing and pictures (freedom of opinion) and freely to receive information from all generally accessible sources (freedom of information). It also provides special protection for the freedom of the press and freedom of reporting by means of broadcasts and films. There is no censorship.

Thus freedom of information enjoys equal status under the Basic Law with freedom of opinion and of the press. There is also a structural link between these self-evident fundamental rights. Freedom of opinion and of information are among the most important prerequisites of a free democracy. They are rooted in the paramountcy accorded by the constitution of the Federal Republic of Germany to the inviolable dignity of man and the free development of personality. Freedom of information is an indispensable precondition for the development of an important part of the personality. It alone makes possible the social and cultural development of man and fits him to play a responsible role in political life.

2. Limitations on freedom of information are only permitted within the framework defined in Article 5, para. 2, of the Basic Law, that is to say, when imposed by general laws, by provisions of law for the protection of young people, and by the right to personal honour.

3. In accordance with the federal structure of the Federal Republic of Germany the Basic Law assigns legislative powers in the field of mass media (press, radio and films) to the Laender. For press and films, however, the Federation is competent to enact skeleton laws.

At the same time the Federation must - regardless of the division of legislative competence provided for in the Basic Law - maintain a special interest in the preservation of rights protected by Article 5 of the Basic Law. For this Article not only ensures freedom of the mass media vis-à-vis the State but also contains a guarantee for the press. Independently of the subjective rights of individuals, the State is obliged, wherever its legislation might affect the press, to ensure that the freedom of the press is not infringed. The freedom to found press organs, free access to journalistic professions, and the duty of public authorities to impart information, are the main consequences.

To enable the process of mass communication to function effectively the Federation and Laender must, by pursuing an active media policy in line with the fundamental principles of the constitution, ensure the further development of State and society for the future.

4. Whereas legislation and court decisions in Federation and Laender in the previous decade consisted mainly of rulings and decisions aimed at giving substance to freedom of information in press and radio, in the five years covered by this report, they

reflected, like other political activity in this sphere in the Federal Republic, a process of adaptation to the constant and increasingly frequent social changes taking place.

5. The situation of the mass media in the Federal Republic of Germany is marked by far-reaching changes in their internal and external structure. This is mainly due to the headlong development of economic and technical conditions in the media. Increasing concentration of the press, particularly at the local and regional level - as many as 30 per cent of the population of the Federal Republic of Germany live in so-called "single newspaper areas" and the number of fulltime editorial staffs of daily newspapers halved, dropping from 225 to some 120, between 1954 and 1975 - tends to reduce the amount and variety of information available to the citizen and thus to affect one of the essential elements of the free democratic state. It has proved impossible, either by intra-medial or inter-medial structural changes, to fill the gaps in the supply of information which became apparent, mainly at local and regional level.

6. At the same time the economic pressure on the journalistic activities of the press has grown as a result of its increased dependence on advertising revenue and of other cost-related factors: the daily press derives an average of two thirds of its total income from advertising and only one third from sales proceeds.

7. In recent years these developments have decisively influenced discussion of the nature and scope of the fundamental rights defined in Article 5 of the Basic Law and have led it in a new direction. Freedom of the press as an institutionalized guarantee has moved to the centre of consideration of policy for the media. Demands for more journalistic independence for those engaged in the media, as well as for more participation by the individual citizen in the process of mass communication, are becoming ever louder. So-called "internal freedom of the media", access by the individual to the media and removal of what is known as "protection of ideological establishments" (see para. 51 below) are the key words in the debate.

8. Side by side with these internal structural changes, in particular in the press, the outward structure of the media is undergoing more and more rapid change as a result of continuing technological development. In 1974 and 1975 a Commission on the Expansion of the Technical Communication System set up by the Federal Government carried out a survey of the requirements and possibilities in the Federal Republic in the near future and has since submitted a Telecommunications Report (see explanation in 20-24 below). The hitherto sharp dividing line between different types of media, i.e. between newspapers and periodicals on one side and radio and television on the other, is beginning to be blurred. Instead, under the influence of revolutionary technological innovations discernible on the horizon, one medium tends to overflow into another. Only the whole picture that emerges from the interaction of the media as a source of information for the citizen - especially the extent to which they complement and compete with each other - can make clear the part that each individual medium plays in the process of information and opinion-forming as a whole.

It is now more necessary than in the past to examine the actual process of mass communication to see how far it corresponds to ideal requirements, and on this basis to arrive at policy conclusions.



9. It should be noted here that public interest in media questions in the Federal Republic of Germany has grown. There has been a marked increase in the sensitivity of the press and radio consumer. Nearly all socially relevant groups in the Federal Republic of Germany have in recent years developed their own ideas on media policy; this is primarily the result of increasing understanding of the function of the media as a check to the power of the state and also of the recognition that a democratic state can be in mortal danger if individuals or individual groups acquire a dominating influence over the media and misuse them to promote their own special interests.

10. Statements of principles governing policy for the media have for example been drawn up as follows:

- Social Democratic Party of Germany: Decisions of the special Party conference on the Mass Media held in Bonn in November 1971;  
Resolution of the Mass Media Commission for "Guidelines for Mass Media 1985", November 1975.
- Free Democratic Party: Wiesbaden principles for a liberal media policy, October 1973.
- Christian Democratic Union of Germany: "Policy regarding the Media", March 1975.
- Evangelical Church in Germany (EKD): "Statement on freedom of information and opinion in a free society", December 1974.
- Catholic Church: "Statement on the discussion of media policy" by the Central Committee of German Catholics, October 1974.
- Printing and Paper Trades Union: "Memorandum on the situation of the press", January 1975.
- German Employees' Union (DAG): "DAG Social Policy Programme", November 1971.
- German Trades Union Federation: "Trades Union demands for media policy" (draft of March 1975).
- Radio, Television and Film Union: "Media policy of the Radio, Television and Film Union", October 1974.

11. The ideas and principles worked out by the above parties and groups are directed primarily to the legislatures of Federation and Laender. It is now for these bodies to find a response, within the framework of the basic principles of Article 5 of the Basic Law, to the various and often contradictory ideas expressed by these heterogeneous groups.

12. The right to free information received an additional impulse from the Final Act of the Helsinki Conference on Security and Co-operation in Europe. In Basket 2 - Information - the participating States set themselves the aim of facilitating a freer and wider dissemination of information of all kinds across national frontiers.

The Federal Government takes the view that international considerations must increasingly be taken into account in the formation of national media policies. This view has been given practical expression in e.g. the Council of Europe, where, following the progressive harmonization over a period of years of press laws in member States, an expert committee on mass media has been set up on the initiative of the Federal Republic. Its task is to work out criteria for a common European media policy covering press, radio and cable communications.

13. In UNESCO too the role of the mass media and the right to communication are being urgently considered.

14. In the United Nations Sub-Committee on Space questions of satellite radio and television are equally gaining in importance.

15. The developments and measures in the Federal Republic of Germany in the period 1970 to 1975 listed in Sections III to V below are to be seen against this background.

## II. Influence of United Nations instruments

16. United Nations documents and resolutions and the binding recommendations produced under the United Nations have a considerable influence on legislation in the Federal Republic of Germany.

17. The Federal Republic of Germany has given full effect in its constitution and other legislation to the principles contained in United Nations instruments, in particular the Universal Declaration of Human Rights, the Human Rights Covenants and the International Convention on the Elimination of All Forms of Racial Discrimination. Indeed the German laws give more protection against infringement of the freedom of the individual, though this is not so comprehensively defined, than the United Nations instruments.

18. In all international forums, especially the United Nations (Committee on Space), UNESCO, Council of Europe and the follow-up to the European Security Conference, the Federal Republic of Germany supports a maximum of freedom of information, information across national frontiers, independence of the media within applicable law, and unimpeded work of those engaged in them. It wishes thereby to contribute to a deepening of knowledge, to the removal of prejudices and better communication between man and man in the service of understanding among the peoples, economic progress, above all in the developing countries, and the peaceful co-existence of all the peoples of the earth.

19. All this also requires, in the light of rapid technical development, a higher priority for international media policy on a national scale in Parliament, Government and among the public.

III. Legislative and other measures adopted during the period

(a) the development of information media

20. Recognizing that the future development of the media will be more influenced than hitherto by news technology, which at ever shorter intervals opens up new forms of transmitting news, and so as to gain as comprehensive a picture of this development process as possible, essential as a basis for decisions on media policy, the Federal Government in February 1974 set up the Commission mentioned in para. 8 above, consisting of qualified representatives from politics, research, the business world, press and radio.

21. The Commission concluded its nearly two years' study in 1975 and in a Report on Telecommunications<sup>1/</sup> submitted a comprehensive review of the current technical level of means of communication.

22. Its main conclusions are:

The telecommunication system of the Federal Republic of Germany (telephone, telex, data transmission) as the infrastructure for the transmission and distribution of communication material is assuming growing importance for economic, social and political development. The telecommunications services provided by the German Federal Post have attained an advanced level of technical and economic development. They are also capable of still further development.

In particular, new forms of communication can be introduced on the existing network, so that far-reaching innovations can be introduced without having to set up entirely new networks. The possible construction in the more distant future of wide-band networks (for example for video-telephone) is dependent on further progress in research and development.

In the interests of the economic and social system of the Federal Republic of Germany high priority should be given, without neglecting traditional communication media, to the expansion of telecommunication networks and the forms of communication they can transmit.

Research and development in important areas of telecommunications need intensive advancement. A prerequisite for the expansion of the technical communication system is increased efforts to achieve international standardization of the new forms of telecommunication.

23. Despite comprehensive investigations and much expert evidence the Commission did not feel able to make a definitive statement on the demand for individual forms of communication. Instead it proposed that to prepare the way for future decisions on the setting up of wide-band networks (e.g. for cable television and other forms of telecommunication) pilot projects should be carried out to test the new forms of communication and ascertain public demand and acceptance and other information relevant to a decision.

24. The preparatory planning for the first pilot project, for which the town of Kassel has been selected, is in progress.

---

<sup>1/</sup> Published by the Federal Minister for Posts and Telecommunications, Bonn; printed by Verlag Dr. Hans Heger, 5300 Bonn-Bad Godesberg 1, Goethestrasse 56.

- (b) the operation of press and publications, radio, film, television and other media;

25. Following a judgement by the Federal Constitutional Court,<sup>2/</sup> which awarded legislative powers in this matter to the Federation, new rules were introduced on the right of journalists to refuse to give evidence.

26. The Law on the Right of Refusal to Give Evidence by representatives of press and radio of 25 July 1975 (Bundesgesetzblatt I p. 1973) provided for persons engaged in press and radio the unlimited right to refuse to give evidence in respect of the editorial part of periodical publications and broadcasts. Similarly it widens the scope of the inhibition against confiscation of press and radio material. In this way the anonymity of sources of information and editorial discretion are better safeguarded than hitherto. Because they are closely related in substance the law also, by amendment of the rules for criminal proceedings, lays down the conditions for confiscation of printed matter, when required so as to ensure its availability for possible subsequent use in criminal proceedings.

27. Under the Law on Press Statistics of April 1, 1975, (Bundesgesetzblatt I p. 777) the Federal Government is empowered to collect data on the structural and economic state of newspapers and periodicals. The law serves the freedom of the press and of information in that it contributes to making the largely unknown structure of the press as a whole better known.

28. In order to counter the continuing concentration of the press in the interest of maintaining press variety the Federal Government has proposed to the legislating bodies measures for the control of press mergers. The amendment which has since been enacted to the Law against Restrictions on Competition provides that the general control on mergers of applicable cartel law should be adapted to the conditions of the press. The generally prescribed minimum turnover of DM 500 million is to be set at DM 25 million because turnover in the press is lower.

29. In order to maintain a solidly-based variety of opinion in the daily press and in the light of the economic situation of the publishers of daily newspapers the Federal Government in the middle of 1975 decided on a programme of economic assistance to the daily papers.

Under a special programme of the Kreditanstalt für Wiederaufbau (Development Loan Corporation) a total of DM 72 million on easy terms has been set aside for credits, particularly credits for operating funds, in the framework of the Institute's programme for medium-sized concerns.

Interest subsidies are to be granted for loans to newspaper publishers applied for in the period from 9 July 1975 to 31 December 1976 out of the ERP press programme and the Special Programme for the Press of the Kreditanstalt für Wiederaufbau. The maximum period for which the subsidy will be granted is four years and the reduction of interest 2 per cent.

---

<sup>3/</sup> Judgement of 28 November 1973, BVerfGE 36, 193.

Finally, consideration is now being given to the possibility of including the daily press, for a limited period, in the law on investment allowances.

30. The Federal Government will further consider whether, in connexion with the increase in Value Added Tax from 1 January 1977, alleviation can be granted for a limited period of time for the first 100,000 copies of any issue of the daily press.

31. The central element of the Federal Government's press assistance programme is a Press Foundation, intended above all to contribute to a solution of the structural crisis of the press. This solution is not to consist of temporary subsidies to individual publishers but to be achieved through permanent improvements in structure (press data banks, co-operation in distribution, joint printing centres, technical innovations, advice from industrial consultants). Appropriate draft legislation is in preparation.

#### Legislation

32. The question, until then not definitively cleared up, whether "censorship" in Article 5, para. 1, third sentence, Basic Law, includes post hoc censorship as well as prior censorship was answered by a decision of the Federal Constitutional Court on 25 April 1972, <sup>3/</sup> to the effect that it only covers so-called "prior censorship". At the same time the Court declared that the inhibition against censorship represents an absolute bar to intervention, not allowing of any exception, even if provided in general laws in accordance with Article 5, para. 2, of the Basic Law.

33. The Federal Constitutional Court emphasized the self-evident nature of the fundamental right of artistic freedom (Article 5, para. 3, of the Basic Law) with precedence before the other rights defined in the Article and in its ruling of 24 February 1971 <sup>4/</sup> - the "Mephistopheles Ruling" - stressed that for artistic freedom neither the bars of Article 5, para. 2, Basic Law, nor those of Article 2, para. 1, second clause, apply. A conflict between the guarantee of artistic freedom and the constitutional protection accorded to the personal sphere is to be resolved in accordance with the order of values in the Basic Law. Artistic freedom is incidentally not restricted to artistic activity but also covers presentation and distribution of the art work.

34. In its decision of 14 March 1972, <sup>5/</sup> the Federal Constitutional Court confirmed the view of the Federal Government that the basic rights of convicted persons as well can only be limited by law or in pursuance of a law. It also made clear that the rights and obligations of convicted persons must be more precisely defined by law, although in the process general clauses can not be dispensed with altogether. The draft Law on Execution of Criminal Sentences submitted by the Federal Government takes into account both the freedom of opinion and of information of a convicted person and the inalienable requirement of an ordered and sensible carrying out of sentence.

---

<sup>3/</sup> BVerfGE 33, 52.

<sup>4/</sup> BVerfGE 30, 173.

<sup>5/</sup> BVerfGE 33, 1.

35. The constitutional importance accorded to freedom of information by Article 5 of the Basic Law was reconfirmed as regards radio in the judgement of the Federal Constitutional Court of 27 July 1971, <sup>6/</sup> known as the "Value Added Tax Judgement". The object of the proceedings was to determine whether the legislative competence of the Federation for turnover tax entitled it to levy such a tax on the radio corporations. The Court answered this in the negative and declared that the activities of radio corporations were not to be regarded as business or professional activity subject to turnover tax. The radio corporations in the Federal Republic of Germany bore public responsibilities, would undertake public tasks and fulfil an integrating function for the State as a whole. The judgement explains that the constitutional peculiarity of the German radio corporations is that this is not a case, as is otherwise usual, of making a public task into a State task and on grounds of expediency assigning it for administration on behalf of the State to a civil law institution incorporated with the State - precisely this is forbidden by Article 5 of the Basic Law - but of surrendering the public task, as one alien to the State, to a body which by reason of its form of organization can ensure that socially relevant groups can take an appropriate part in the output of radio and television.

36. In connexion with the Value Added Tax Judgement and the decision on artistic freedom mentioned in para. 33 the judgement of the Constitutional Court of 5 March 1974, <sup>7/</sup> known as the "gramophone record judgement" must also be mentioned. Here it had to be determined whether taxing the supply of gramophone records at the full Value Added Tax rate of 11 per cent instead of at the lower rate of 5.5 per cent set for the other goods and services falling under Article 5 of the Basic Law (press productions, books) constituted an infringement of fundamental rights. In the light of the fundamental value judgements made by the constitution in Article 5, para. 1 of the Basic Law (freedom of information and of the press) the Federal Constitutional Court ruled that taxing turnover on gramophone records at the full rate, was justified by considerations of fact - notwithstanding tax advantages or exemption for other goods and services in the cultural field - and did not infringe the principles of equality deriving from the fundamental principles of Article 5, paras. 1 and 3, of the Basic Law.

37. Finally in its judgement of 31 July 1973, <sup>8/</sup> - "Judgement regarding the Basic Treaty" - the Federal Constitutional Court again stressed the independence from the State of radio and television in their choice of programmes and ruled that this was not affected by the Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic of 21 December 1972; and in particular that this Treaty constituted no legal basis for prohibiting, by legal or administrative measures, radio or television transmissions unwelcome to the German Democratic Republic. Anything broadcast in the Federal Republic of Germany within the general terms of reference for institutions and in the framework of existing laws on their organization cannot be regarded as incompatible with the Treaty; in no event may the Federal Republic of Germany enter into an agreement which would restrict this freedom of the institutions.

---

<sup>6/</sup> BVerfGE 31, 314.

<sup>7/</sup> BVerfGE 36, 321.

<sup>8/</sup> BVerfGE 36, 1.

38. Besides the Federal Constitutional Court the Federal High Court has often in the period under review given interpretations of Article 5 of the Basic Law. In its judgement of 26 March 1971, <sup>9/</sup> the Court pointed out, adding to an earlier decision, the importance of the daily newspapers as a source of information and ruled that the gratis distribution of freesheets containing editorial matter infringes genuine competition of the journal is taken seriously by a substantial part of the public as a substitute for the daily newspaper or at least as a source of information similar to the daily press. If as a result even a single newspaper is adversely affected to such an extent that it can no longer take part in the interplay of opinions between the various social forces the press as such could be affected and thus the public interest be impaired.

39. In its judgement of 30 November 1971, <sup>10/</sup> the Federal High Court made an important contribution to Protection of personal rights and further developed the obligation to accuracy in press reporting; under this ruling a press organ which reports an unconfirmed criminal sentence on a named person must at the latter's request also report the fact if the criminal proceedings end in an acquittal.

40. In its judgement of 30 May 1972, <sup>11/</sup> the Federal High Court ruled that measures by demonstrators to blockade a press concern with the object of preventing distribution of a press publication infringe the fundamental right of freedom of the press; the right to demonstrate does not justify the use of force.

41. Finally, in its judgement of 20 June 1972, <sup>12/</sup> the Federal High Court established, on the basis of judgement by the former Reich Court, the responsibility of the newspaper publisher for the advertisement section of his paper as well.

Under this ruling publishers and editors are obliged, when accepting orders for advertisements, to examine carefully whether to publish them would infringe legal provisions and are bound to refuse advertisements whose contents are in conflict with the law.

42. The granting of interest-free State credits to Berlin newspaper publishers was declared by the Higher Administrative Court in Berlin in its judgement of 25 April 1975, <sup>13/</sup> to be illegal in the absence of any legal basis for the grant. The Court proceeded on the assumption that a continuing concentration of the press could provide cause and justification for the State, in order to maintain a diversity of views in the press, to help press concerns in danger of extinction by granting credits. Such financial help did not conflict with Article 5 of the Basic Law. But the independence of the State guaranteed to the press by Article 5, para. 1, sentence 2, of the Basic Law required that the circumstances in which help would be granted should be determined by law, so as to limit the discretion of the administration and prevent it from influencing the political trend of the newspapers assisted.

---

<sup>9/</sup> NJW 1971 p. 2025 sq.

<sup>10/</sup> BGHZ 57, 325.

<sup>11/</sup> BGHZ 59, 20.

<sup>12/</sup> BGHZ 59, 76.

<sup>13/</sup> NJW 1975 p. 1938 sq.

Decisions, Agreements

43. Further measures to safeguard freedom of information in the Federal Republic of Germany are the Decisions of the Standing Conference of the Ministers of the Interior of the Laender and the Laender Judiciary:

44. The Conference of Ministers of the Interior approved on 16 December 1971 principles of conduct for press and police to avoid obstruction in the execution of police duties and the free exercise of reporting worked out with the German Press Council. The principles are designed to help press and police to conduct themselves in a way that will ensure the unimpeded exercise of functions on both sides.

45. The Conference further agreed, on 28 September 1973, on rules for recourse to press organs in connexion with police searches under which the police may in their searches ask for co-operation from the publishing media (press, radio, television). The latter may only be resorted to, in accordance with the principles of due proportion, when other measures have failed or seem unlikely to succeed or to succeed in time.

46. This decision is closely linked in substance with the provisions for recourse to publishing media in the search for persons wanted in connexion with criminal proceedings, agreed on by the Laender judiciaries and the Federal Minister of Justice and prevailing throughout the Federal Republic (entered into force for the Federal Judiciary with effect from 15 March 1973).

(c) the participation of journalists and the public in the ownership or control of the media;

47. There is no standard answer to questions of participation of journalists and the public in the ownership or control of the media, on account of the differing origins of press and radio in the Federal Republic of Germany.

48. In the private enterprise field of the press discussion of "internal press freedom" has not so far led to a legal or contractual division of competences (competence in matters of principle, for guiding lines, for detail) or of participation by editorial staff members in editorial policy.

The Federal Government has, however, repeatedly declared its intention of regulating by law the relationship between publisher and editor as regards the editorial content of a paper or periodical by means of a legal delimitation of journalistic competence. This would include laying down the general journalistic attitude of the journal, making this public from time to time and including it in the contracts of employment of the editorial staff, and determining other competences including the rights and obligations of editorial staff and their association with commercial and personnel decisions.

The number of newspapers and periodicals which are trying with "editorial statutes", "guiding principles" or "journalistic principles" to arrive at a suitable delimitation of editorial competences has steadily risen.

49. However, the scope of such arrangements, their basis in law and the extent of regular staff participation, varies considerably from case to case. While some statutes are confined to the establishment of political, ideological or other aims



of the newspaper or periodical others - in varying ways and to a varying extent - contain rules for the relationship between publisher and editorial staff; competences within the latter, protection for an editor's conscience and the setting up of a body to represent editorial staff; an affirmation of the duty of the press to the public, justification of the right to share in editorial decisions on substance or concerning personnel, or the right of editorial staff to be informed of the economic state of the concern are sometimes included. Other statutes describe editorial working methods in selecting news, establish the journalist's obligation of accuracy or deal with the training of apprentices.

50. There has, however, been legislation on the constitution of business enterprises in the Federal Republic of Germany, in the shape of the new Works Constitution Act of 15 January 1972, (Bundesgesetzblatt I p. 13).

51. The exceptions provided in the law valid until then, which substantially restricted association of the Works Council with personnel, social and commercial decisions in so-called "establishments with a commitment", i.e. enterprises with a specific ideological aim, have been narrowed down in the interest of holding the balance between the principle of the social state on one hand and the right to liberty of the enterprise which pursues the aim in question on the other. Thus for example the provisions of the law on right of participation by the Works Council in social and personnel matters are only applicable to the extent that they do not conflict with the special character of the establishment or works. In the case of changes affecting the works (closing down, removal, lockout) the right of participation is limited to compensation for or alleviation of adverse economic effects. The ideological aims which may be protected are listed in the law. Ideological protection for the press is specially dealt with in § 118, para. 1 No. 2 of the Works Constitution Act. This applies to establishments and works which "directly and predominantly serve the purpose of reporting or expression of opinion to which Article 5, para. 1, second sentence, of the Basic Law applies". Within this framework the authors of the Works Constitution Act of 1972 still considered it sound to ensure ideological protection to this extent.

52. The ideological protection granted to the press by § 118 of the Works Constitution Act does not apply to public radio corporations; the law cannot be applied to public institutions, among others, and this is what radio corporations in the Federal Republic of Germany are. For this reason the rules on the right of personnel representation in force for the civil service apply in the field of radio: for the two radio corporations subject to federal law, Deutsche Welle and Deutschlandfunk, the Law on Federal Personnel Representation of 15 March 1974, (Bundesgesetzblatt I p. 693); and for the nine Laender radio corporations and the television corporation Zweites Deutsches Fernsehen, all subject to Land law, the appropriate legislation of the Laender. Under these the participation of staff representatives in personnel questions is limited to employees whose income does not exceed a given level. In addition there are as a rule special arrangements for employees concerned with the content of programmes. These arrangements ensure that the final decision rests with the Director-General. In this way the responsibility conferred on him by law vis-à-vis the supervisory bodies (Radio Council, Administration Council) remains intact.

53. In line with the attempts apparent in the press field to delimit competences in the editorial content of press publications, radio editors are also trying to establish special forms of participation in deciding on programme content. Many

editors consider that as in the press their participation should be institutionalized by editorial statutes. The pattern envisaged here of relations between the Director-General as bearing responsibility for the entire programme and the editorial staff is known as "internal radio freedom".

54. In nearly all radio corporations in the Federal Republic of Germany the editorial staffs have drawn up statutes, which, however, require action by the Director-General, in some cases with the participation of the editors or of a committee elected from among their number, before they can come into effect. So far only at North German Radio has a statute for programme staff of the NDR come into force (June 1973). In some radio corporations the Director-General, usually working with the staff representatives, has issued general internal working rules, e.g. Service Instructions of Bavarian Radio 3/71 (October 1971); Service Agreement on training, right to be heard and right to information of representatives of professional groups at Radio Free Berlin (December 1971); Principles for co-operation with staff representatives and general internal working rules at the South-Western Radio (January 1973); Principles for co-operation with the staff council and general internal working rules for employees of Deutschlandfunk (October 1973); Rules on participation at the West German Radio, Cologne (June 1973); Ground rules for co-operation in the Zweites Deutsches Fernsehen (January 1973).

55. The civil-law character of the radio corporations and the final responsibility for the programme content conferred by radio law on the Director-General do not leave much scope for regulations on participation by radio employees specifically geared to radio. For this reason the regulations made so far concentrate mainly on improving the work of radio corporations in the formation of public opinion by a proper use of the right to receive and obligation to impart information, improvement of internal co-operation among the staff, protection of freedom of opinion and responsibility of editorial staff and the right to a hearing over and above the rights on staff representation in the case of particular personnel measures. They leave intact the final responsibility for contents of programmes conferred on the Director-General by the radio laws.

(d) the professional training of information personnel

56. The Government of the Federal Republic of Germany attaches great importance to the question of professional training of information personnel. Satisfactory facilities for initial and advanced training are in its view of basic importance for the safeguarding of freedom of information and the fulfilment of the duties of press and radio in regard to a democratic formation of opinion.

57. For this reason the Federal Government in 1971 commissioned a study of the situation in journalistic training. One of the most important conclusions of this survey - shared by those themselves affected - was that an adequate initial and advanced training cannot be provided in a newspaper alone. A form of training which combines theory and practice is to be preferred.

The conclusions of this scientific study are supported by numerous practising journalists and their professional bodies. Suggestions for the short, middle and long-term have been submitted and the debate on possible training patterns is still in progress.

58. In all future consideration account will have to be taken of the fact that the profession of journalism in the Federal Republic of Germany must remain a profession open to anyone with the necessary aptitude. To set conditions for admission to the profession would be incompatible with the right to "free access to the journalistic professions". But for the reason a uniform training as a prerequisite for entry to the profession cannot be made compulsory either. In view of the subjective conditions for entry, access to the profession - without prejudice to the possible establishment of minimum conditions for admission - may not be made more difficult by demanding excessively high initial qualifications.

- (e) standards and professional ethics for journalists, and bodies concerned with the implementation of such standards

59. The German Press Council, a group of personalities from the press in the Federal Republic of Germany, of equal status, independent and not subject to instructions from any source, lays down in its rules of procedure its fundamental tasks as follows:

- (a) to protect the freedom of the press and ensure unimpeded access to news sources;
- (b) to uncover any abuses in press affairs and to eliminate them;
- (c) to watch the structural development of the German press and to guard against the formation of undertakings or monopolies which might endanger freedom;
- (d) to represent the German press vis-à-vis Government, Parliament and public, particularly in cases of draft legislation affecting the life and tasks of the press.

60. The German Press Council is a voluntary body for the self-supervision of the press with the aim, among others, of getting the German press on a voluntary basis to give more publicity than hitherto to criticism by the Council as a result of complaints of abuses in the press. To this end the German Press Council has set up a Complaints Committee accessible to all and on 19/20 September 1973 laid down journalistic principles (Press Code) for the work of publishers, owners and journalists.

In the recent past the German Press Council has more than once asked the State to make legislative provision for funds to enable the work of the Complaints Committee to continue on a permanent basis. A draft law to this effect is now before the German Bundestag.

IV. Limitations upon the exercise of freedom of information, particularly those pertaining to:

- (a) the protection of the reputation, rights and freedoms of others, including protection against interference with privacy;

Under the "Lebach judgement" of 5 July 1973, a radio or television corporation can in principle invoke the protection provided in Article 5, para. 1, sentence 2, of the Basic Law. If, however, freedom of the radio comes into conflict with other rights, such as for example protection of personality, the intentions of the actual

programme, the way it is presented and the desired or foreseeable effect would be decisive. Thus in topical reporting of serious crimes the public interest in information is generally given precedence over personality protection of the person committing the crime. Nevertheless consideration must be given not only to the inviolable area of private life but also to the principle of due proportion; this means that mentioning the name, showing a picture or otherwise identifying the person concerned is not always allowed. Constitutional protection of the personality further forbids television to concern itself, over and above topical reporting or for an indefinite time, with the person of the criminal or his private life in the form for example of a documentary play.

- (b) the protection of national security or of public order, or of public health or morals, including suspension of freedom of information in situations of emergency;

61. The Fourth Penal Code Reform Law of 23 November 1973, (Bundesgesetzblatt I p.1725) amended among other things the provisions of § 184 of the Penal Code. The amendment deals primarily with the distribution of pornographic literature and films and in the light of the changed attitude to sexuality restricts criminal liability for the distribution of pornography, in comparison with the previous law. Pornographic literature and films are held to be those which are clearly aimed exclusively or predominantly at sexually stimulating the spectator and in so doing unequivocally exceed the limits of generally accepted sexual decency. Protection of youth, protection of the public (e.g. a ban on advertisement and display), and the protection of those who do not wish to be confronted with pornography are, however, maintained. There is a general ban on sadistic, paedophile and sodomitic pornography.

The Fourth Penal Code Reform Law also introduced a new criminal provision against representations which show violence towards human beings of a cruel or inhuman nature and thereby glorify violence or present it as harmless or which incite to racial hatred ( § 131 of the Penal Code).

62. The Introductory Law to the Penal Code of 2 March 1974, (Bundesgesetzblatt I p. 469) modifies the law on public announcement of verdicts. §§ 165 and 200 of the Penal Code recognize the right of the injured party in cases of false accusation and libel to publication of the verdict. Before it was amended the law merely gave the injured party the right to publication and left it to him to secure his rights himself. This unsatisfactory state of affairs has been changed in the sense that §§ 165 and 200 now provide for the court, on application by the injured party, to order publication of the verdict.

63. The Federal Office for Control of Literature Harmful to Youth has the following functions

1. On application, to place on the list of literature harmful to youth writings, sound recordings, pictures and other representations calculated morally to endanger children and young persons up to 18 years of age, and to publish the fact in the Federal Gazette. This has the effect of subjecting them to limitations on publication and advertisement making them inaccessible to children and young people. Harmful to youth is defined in the relevant law as immoral, coarsening, inciting to violence, crime or racial hatred, or glorifying war;

2. ex officio, to place on the list of literature harmful to youth any literature which has been declared by a court of law to be pornographic or to glorify war in the sense of §§ 184 and 131 of the Penal Code, and literature whose content is wholly or substantially similar to that of a publication already on the list, and to publish the fact in the Federal Gazette;
3. in accordance with the laws to represent the Federal Republic of Germany in legal suits brought against the decisions of the Office, to maintain the list of literature harmful to youth, to announce entries on the list in the Federal Gazette and to publish the list.

The Control Office is an independent federal agency under the Federal Ministry for Youth, Family Affairs and Health.

- (c) advocacy of and propaganda for national racial or religious hatred or racial and religious discrimination;
64. Fully covered by existing law.
- (d) propaganda for war
65. Fully covered by existing law.
- (e) coverage by the press and other media of court proceedings
66. The Introductory Law to the Penal Code (EGStGB) - see also para. 62 - incorporated in the Penal Code (§ 353 (d) No. 3 StGB) the ban until then contained in the press laws of the Laender on publication of the indictment or other court documents in criminal or civil proceedings. The ban is thus extended to all kinds of publications (press, radio, films).
- The press and other media carry balanced and adequate reports on court proceedings in general.
- (f) other considerations
67. No other considerations at present.
- V. Action with a view to ensuring that freedom of information and access to information are enjoyed by increasing numbers of the population without distinction of any kind

68. Freedom of information and access to information are granted equally to all citizens.

In a growing number of communities the use of community antenna systems has enabled the owners of radio and television sets to receive foreign radio or

television programmes either for the first time or in better quality than hitherto. Thus programmes from France, the Netherlands and the German Democratic Republic are received on community antennae on this side of the border.

VI. Difficulties experienced in ensuring the enjoyment of freedom of information and access to information and methods and measures utilized to overcome these difficulties

69. Nothing to report.